

Rule 1201. APPLICABILITY

The rules in this chapter* apply to the exercise by a hearing officer of jurisdiction under Section 6110 [, **Title 23**] of the Protection From Abuse Act, **23 Pa.C.S. § 6110**, to grant emergency relief from abuse.

* Rules in the 1200 series.

Note

See the Protection From Abuse Act set forth in the Domestic Relations Code, 23 Pa.C.S. [**A., Section**] **§ 6101 et seq.**

Adopted effective March 24, 1977. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective March 27, 1992; **amended November 2, 2001, effective February 1, 2002.**

[**Explanatory Comment - 1992**]
(DELETE ENTIRELY)

Rule 1202. DEFINITIONS

As used in these rules:

(1) "Abuse," "adults" and "family or household members" shall have the meanings given to those words in Section 6102 [, Title 23] of the Protection From Abuse Act, **23 Pa.C.S. § 6102.**

(2) "Court" means the court of common pleas of the judicial district in which the office of the [**district justice**] **hearing officer** taking action under these rules is located.

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[**Note**

The definition of "court" varies somewhat from the definition in Section 6102, Title 23 of the Protection from Abuse Act, which merely defines "court" as "the court of common pleas", since under 6110(c), orders issued by the hearing officer must be certified to "the court" and it was thought necessary to define more particularly the court of common pleas to which the order will be certified.]

Adopted effective March 24, 1977. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective March 27, 1992; **amended and Note deleted November 2, 2001, effective February 1, 2002.**

Rule 1203. LIMITATION ON JURISDICTION

The hearing officer may grant relief under these rules only when the court is unavailable to do so pursuant to the provisions of Section 6110 [, **Title 23**] of the Protection From Abuse Act, **23 Pa.C.S. § 6110**, or local rule of court.

Note

The limitation in this rule is taken from Section 6110 [, **Title 23**] of the Protection From Abuse Act, **23 Pa.C.S. § 6110**.

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Adopted effective March 24, 1977. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective March 27, 1992; **amended November 2, 2001, effective February 1, 2002.**

Rule 1204. VENUE

A. Except as provided in subdivision B, [A] a proceeding for emergency relief [shall] may be brought in [the] a magisterial district within the county in which [the abuse for which relief is requested occurred]

(1) the plaintiff resides, either temporarily or permanently, or

(2) the abuse occurred.

B. If the relief sought includes possession of the residence or household to the exclusion of the defendant, the action may be brought only in a magisterial district within the county in which the residence or household is located.

Note

[In view of the nature of the proceedings and the type of relief that may be granted, it was thought best to limit venue to the magisterial district in which the abuse occurred.] **This rule is consistent with Pa.R.C.P. No. 1901.1 and provides the necessary flexibility to a plaintiff who may have to flee the county of permanent residence to escape further abuse. This rule is intended to provide maximum flexibility to a plaintiff to use a convenient forum to seek an emergency protective order. However, where practicable, plaintiffs should give preference to filing in the magisterial district in which the plaintiff resides, either temporarily or permanently, or in the magisterial district in which the abuse occurred.** A proceeding is considered to have been brought in a magisterial district even if it is before a hearing officer serving temporarily in that district, or before a hearing officer who has been invested by local rule with temporary county-wide jurisdiction.

Adopted effective March 24, 1977. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective March 27, 1992; **amended November 2, 2001, effective February 1, 2002.**

Rule 1205. PERSONS WHO MAY SEEK EMERGENCY RELIEF

[A person] An adult or an emancipated minor may seek emergency relief from abuse for himself or herself. Also, any parent, **[or]** adult household member **or guardian ad litem** may seek emergency relief from abuse on behalf of minor children. In addition, a guardian of the person of an **[incompetent adult] incapacitated person as defined in 20 Pa.C.S. § 5501** may seek emergency relief on behalf of the **[incompetent adult] incapacitated person**.

Note

This rule **[was taken] is derived** from Section 6106 [, **Title 23**] of the Protection From Abuse Act, **23 Pa.C.S. § 6106**.

Adopted effective March 24, 1977. Amended effective March 27, 1992; **amended November 2, 2001, effective February 1, 2002**.

Rule 1206. COMMENCEMENT OF PROCEEDINGS

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B. Upon [filing of a petition] issuance of an emergency order, the hearing officer shall [advise] provide the plaintiff with instructions regarding the commencement of proceedings in the court of common pleas and regarding the procedures for initiating a contempt charge should the defendant violate the emergency order. The hearing officer shall also advise the plaintiff of the existence of programs for victims of domestic violence in the county or in nearby counties and inform the plaintiff of the availability of legal assistance without cost if the plaintiff is unable to pay therefor.

C. The petition shall be filed and service shall be made without prepayment of costs.

Note

It was thought desirable to require the petition to be on a simple, prescribed form since this is an emergency proceeding and the plaintiff is apt to be in an excited state at the time of the filing. Subdivision B is added to assure compliance with the requirement of Section 6110(d) [, Title 23] of the Protection From Abuse Act, 23 Pa.C.S. § 6110(d). Practice varies among the judicial districts as to what procedures the plaintiff must follow to continue in effect a protection order in the court of common pleas upon the certification of an emergency protection order to the court of common pleas. The hearing officer should provide clear instructions to the plaintiff as to what must be done to continue in effect the protection order in the court of common pleas. See Rule 1210 and Note and Rule 1211 and Note. Subdivision C is derived from Section 6106(b) of the Act, 23 Pa.C.S. § 6106(b) and reflects the practice when a temporary order is issued at the common pleas level.

Adopted effective March 24, 1977. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective March 27, 1992; amended November 2, 2001, effective February 1, 2002.

Rule 1207. HEARING

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Note

Under Section 6110(a) [, **Title 23**] of the Protection From Abuse Act, **23 Pa.C.S. § 6110(a)**, the hearing is ex parte, and under Section 6110(b) [, **Title 23**] of the Act, **23 Pa.C.S. § 6110(b)**, the emergency orders issued by the hearing officer as a result of the hearing are of short duration. Accordingly, there are no provisions in these rules for notice to the defendant prior to hearing. The hearing need not be held at the office of the hearing officer. The last phrase was added to insure compliance with Section 6112 [, **Title 23**] of the Act, **23 Pa.C.S. § 6112**.

Adopted effective March 24, 1977. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective March 27, 1992; **amended November 2, 2001, effective February 1, 2002.**

Rule 1208. FINDINGS AND PROTECTION ORDERS

A. If the hearing officer, upon good cause shown, finds it necessary to protect the plaintiff or minor children from abuse, he may grant relief in accordance with Section [**6108(a)**] **6110(a)** [, Title 23] of the Protection from Abuse Act, **23 Pa.C.S. § 6110(a)**, and make any protection orders necessary to effectuate that relief. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause.

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Note

Subdivision A of this rule is [**taken**] **derived** from Section 6110(a) [, Title 23] of the Protection From Abuse Act, **23 Pa.C.S. § 6110(a), which permits the hearing officer to grant limited relief in accordance with Section 6108(a)(1), (2) and (6) or (1) and (6) of the Act (relating to relief).**

Adopted effective March 24, 1977. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective March 27, 1992; **amended November 2, 2001, effective February 1, 2002.**

Rule 1209. **SERVICE AND EXECUTION OF EMERGENCY PROTECTION ORDERS**

The hearing officer shall provide to the plaintiff a copy of a protection order made under Rule 1208. The hearing officer **or, when necessary, the plaintiff** shall immediately deliver **a service copy of** any protection order made under Rule 1208 to a police officer, police department, sheriff or **certified** constable for **service upon the defendant and** execution. **[If the defendant is present at the time the protection order is executed, the executing officer shall serve a copy of the petition form containing the order upon the defendant. Otherwise,]** **After making reasonable effort, if** the executing officer **is unable to serve the protection order upon the defendant in a timely fashion, the executing officer** shall leave **[the] a** service copy of the petition form containing the order with the **[plaintiff] police department with jurisdiction over the area in which the plaintiff resides** for service upon the defendant, **and shall advise such police department that the order could not be served.**

Note

The hearing officer should provide the plaintiff with at least one copy of a protection order, but more than one copy may be needed. For example, the plaintiff may wish to serve the order upon multiple police departments when the plaintiff lives and works in different police jurisdictions, etc. If it is necessary for the plaintiff to deliver the protection order to the executing officer, the hearing officer should make sure that the plaintiff fully understands the process and what must be done to have the order served upon the defendant. The hearing officer should make every effort to have the protection order served by a law enforcement officer in a timely fashion. The Rule requires that if the executing officer is unable to serve the protection order in a timely fashion, the executing officer shall leave a service copy of the order with the police department with jurisdiction over the area in which the plaintiff resides. This was thought advisable so that the local police would have a service copy in case they would be called to the plaintiff's residence should the defendant return there. Due to the emergency nature of these protection orders and the fact that to be meaningful they must be **served and** executed **at night or** on a weekend, the hearing officer should have the authority to use police officers as well as sheriffs and **certified** constables to **serve and** execute these orders. **[See] See** Section 6109(a) **[, Title 23]** of the Protection From Abuse Act, **23 Pa.C.S. § 6109(a).**

Service shall be made without prepayment of costs. See Rule 1206(C).

Service of protection orders upon the defendant at the time of execution may not be possible under some circumstances.

Adopted effective March 24, 1977. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective March 27, 1992; **amended November 2, 2001, effective February 1, 2002.**

Rule 1210. DURATION OF **EMERGENCY** PROTECTION ORDERS

Protection orders issued under Rule 1208 shall expire [**as of the resumption of business of the court at the beginning of the next business day**] **at the end of the next business day the court deems itself available.**

Note

This rule is [**taken**] **derived** from Section 6110(b) [, **Title 23**] of the Protection From Abuse Act, **23 Pa.C.S. § 6110(b).** **Practice varies among the judicial districts as to what procedures the plaintiff must follow to continue in effect a protection order in the court of common pleas upon the certification of an emergency protection order to the court of common pleas. The hearing officer should provide clear instructions to the plaintiff as to what must be done to continue in effect the protection order in the court of common pleas. See Rule 1206 and Note and Rule 1211 and Note.**

Adopted effective March 24, 1977. Amended effective March 27, 1992; **amended November 2, 2001, effective February 1, 2002.**

Rule 1211. CERTIFICATION TO COURT **OF COMMON PLEAS**

A. Any protection order issued under Rule 1208, together with any documentation in support thereof, shall immediately be certified to the court **of common pleas** by the hearing officer.

B. Certification under subdivision A of this Rule shall be accomplished by sending to the prothonotary of the court by first class mail or messenger a certified [**true**] copy of the petition form containing the order, with any supporting documentation attached.

Note

Certification under subdivision A of this rule is required by Section 6110(c) [, **Title 23**] of the Protection From Abuse Act, **23 Pa.C.S. § 6110(c)**. **This rule is also consistent with Pa.R.C.P. No. 1901.3(b) which permits commencement of an action by filing with the prothonotary a certified copy of an emergency protection order. However, practice varies among the judicial districts as to how the protection order is continued in effect after it is certified to the court of common pleas. For example, some judicial districts may require that the plaintiff appear in person to continue the action in the court of common pleas. Others may automatically commence an action in the court of common pleas upon receipt of a certified copy of the emergency order from the hearing officer. See Rule 1206 and Note and Rule 1210 and Note.**

[**At the request of the plaintiff, the hearing officer may appoint**] **Depending on local practice**, the plaintiff or the plaintiff's representative [**to**] **may** act as a messenger under subdivision B of this rule.

Adopted effective March 24, 1977. Amended June 30, 1982, effective 30 days after July 17, 1982; amended effective March 27, 1992; **amended November 2, 2001, effective February 1, 2002.**